



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Oakland Corporation

File: B-230717.2

Date: July 27, 1988

DIGEST

Where a small business concern protests a nonresponsibility finding by a contracting officer and the subsequent refusal of the Small Business Administration (SBA) to issue a certificate of competency to the concern, General Accounting Office will dismiss the protest where the protester has not shown possible fraud or bad faith on the part of the contracting officials or the SBA and where the protester has not shown that the SBA failed to consider vital information bearing on the firm's responsibility.

DECISION

Oakland Corporation (Oakland) protests the rejection of its low bid under invitation for bids (IFB) No. N62474-85-B-5397, a total small business set-aside, which was issued for the demolition of the existing sprinkler system and the installation of a new sprinkler system in seven warehouses at the Naval Supply Center, North Island Annex, San Diego, California. Oakland's low bid was rejected because the Navy found Oakland to be nonresponsive and, upon referral of the question of Oakland's responsibility to the Small Business Administration (SBA), the SBA declined to issue a certificate of competency (COC) to Oakland. Oakland contests both the Navy's finding of nonresponsibility and the SBA's denial of a COC.

We dismiss the protest.

The Navy found Oakland to be nonresponsive based on a "pattern of unsatisfactory performance on the part of Oakland" involving four Navy contracts.^{1/} Since Oakland is

^{1/} Three of the contracts pertained to Oakland. The fourth contract (Fire Escape Stairs, Camp Pendleton, California, No. N62474-84-C-0960) had been performed by "Oakland Construction, Inc.," whose vice-president (Lyn B. Oakland) also serves as the president of Oakland and who, the record

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a small business, the Navy referred its nonresponsibility decision to the SBA for consideration under the COC procedure. Thereafter, the SBA informed Mr. Oakland by letter of March 8, 1988, that it had declined to issue a COC. Specifically, the SBA's March 8 letter, which was addressed to "Oakland Construction, Inc."^{2/}, stated that "your past performance on government contracts, including one contract awarded through a COC, was considered less than acceptable." Based on this performance record and considering the magnitude of the proposed contract, the SBA found that there was no reasonable assurance that the work required would be completed in a timely manner and denied issuance of the COC.

The SBA, not this Office, has the statutory authority to review a contracting officer's finding of responsibility and then to determine conclusively a small business concern's responsibility. Our review is limited to whether bad faith or fraudulent actions on the part of procurement officials resulted in a denial of the protester's opportunity to seek SBA review of a nonresponsibility determination or whether the SBA's denial of a COC was made in bad faith. Zan Machine Company, Inc.--Request for Reconsideration, B-229705.2, Jan. 19, 1988, 88-1 CPD ¶ 50. Thus, we have reviewed protests where the actions of procurement officials allegedly have prevented a firm from seeking a COC, see Washington Printing Supplies, Inc., 66 Comp. Gen. 647, 87-2 CPD ¶ 234, or where there is an allegation that the bad faith or fraudulent actions of procurement officials have resulted in the SBA's denial of a COC, Franklin Wire & Cable Co.--Reconsideration, B-218557.2, et al., June 5, 1985, 85-1 CPD ¶ 644. Similarly, we will review allegations that bad faith or fraudulent actions on the part of SBA officials have resulted in the denial of a COC or where there is an

shows, receives mail for both companies at the same mailing address in Encino, California. The listing of contract -0960 in the nonresponsibility determination resulted from an inadvertent error, the Navy reports, caused by the presence of Mr. Lyn B. Oakland, as a corporate official for both firms as well as, apparently, by the similarity of the corporate names and the common mail receipt location for both companies.

^{2/} Based on information it obtained from SBA, the Navy insists that this address resulted from an apparent SBA typographical error and that the SBA actually intended to type the name of Oakland Corporation, the bidding entity, on the letter which informed the protester of the denial of the COC.

allegation that SBA officials failed to consider vital information bearing upon a firm's responsibility. AquaSciences International, Inc.--Request for Reconsideration, B-225452.2, Feb. 5, 1987, 87-1 CPD ¶ 127. To establish bad faith requires virtually irrefutable proof that government officials had a specific and malicious intent to harm the protester. Midwest Security Agency, Inc., B-222424, Apr. 7, 1986, 86-1 CPD ¶ 345.

Oakland argues that the Navy and the SBA have shown bad faith in confusing the performance record of "Oakland Corporation" and "Oakland Construction Inc." to the detriment of the former. Oakland also insists that the Navy's review of Oakland's performance history amounts to bad faith.

We see no basis to question the Navy's position that the listing in the contracting officer's nonresponsibility determination of one contract performed by Oakland Construction, Inc., in addition to the three performed by the bidding entity was done other than inadvertently. Further, we see no evidence that the SBA's addressing of its March 8 letter to Mr. Oakland at "Oakland Construction, Inc." resulted from other than inadvertent error. In fact, Mr. Oakland may have contributed to the SBA's error by means of his February 12, 1988, letter to the SBA, in which he explained that Oakland Corporation and not Oakland Construction, Inc., was the bidder on this procurement, in that the letterhead of this letter is that of "Oakland Construction, Inc.," notwithstanding the explanation contained in the body of the letter. Therefore, the letterhead name could have easily been transferred by error to the SBA's March 8 letter sent to Mr. Oakland. Finally, a SBA representative has specifically informed the Navy that the "COC application was processed strictly on Oakland Corporation" and that the "decision to deny the COC" was based "strictly [on] the evaluation of Oakland only." While Oakland generally questions the Navy's position that SBA considered only Oakland's performance history, Oakland's general questioning does not establish that, in fact, SBA also considered the performance history of Oakland Construction, Inc., given the SBA's position to the contrary.

Further, none of Oakland's comments on the Navy's and the SBA's other actions have shown fraud or bad faith or that the SBA failed to consider vital information bearing on Oakland's responsibility. Although Oakland disagrees with the Navy's conclusions on its performance history (for example, Oakland alleges that the Navy, rather than Oakland, is responsible for \$185,000 in additional engineering charges under one of Oakland's prior contracts), this disagreement is not evidence, in itself, of bad faith.

Furthermore, Oakland has not made any showing that the SBA acted in bad faith in reviewing the company's performance history or that the SBA failed to consider vital information.

Finally, Oakland also notes that the Navy allegedly misinformed the SBA as to the magnitude of the contracts Oakland previously had performed. The Navy had advised the SBA that Oakland had not received any Navy contract valued over \$1.3 million in contrast to the contract to be awarded under this IFB, valued over \$2.5 million--a difference of \$1.2 million. Disputing the Navy's calculation of the "value" of one of its prior contracts as well as this procurement, Oakland argues that this contract is only \$650,000 more than any previous Navy contract it had performed, and not \$1.2 million as the Navy indicated. Regardless of whether the spread should be \$650,000 or \$1.2 million this figure was not mentioned in the SBA's March 8 letter in any way but rather the "less than acceptable" performance history was cited. Consequently, the spread figure is irrelevant to the protest.

Since the protester has not made the requisite showing for our review, we dismiss the protest.

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